

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRANDON C. LOGAN

Plaintiff,

vs.

Civil Action 2:10-CV-110
Judge Frost
Magistrate Judge King

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

OPINION AND ORDER

Plaintiff in this action challenges the denial by the Commissioner of plaintiff's application for supplemental security income. On January 24, 2011, the United States Magistrate Judge recommended that the decision of the Commissioner be reversed and that the matter be remanded for further consideration of whether plaintiff's seizure disorder meets or equals a listed impairment. *Report and Recommendation*, Doc. No. 19. This matter is now before the Court on the Commissioner's objection to that recommendation. *Objection*, Doc. No. 20. The Court considers the matter *de novo*. 28 U.S.C. 636(b); Fed. R. Civ. P. 72(b).

In finding that plaintiff's seizure disorder neither met nor equaled a listed impairment, the administrative law judge did not expressly consider the requirements of Listing 11.02, which addresses convulsive epilepsy, but instead merely relied on the opinions articulated by the state agency physicians. A.R. 11-12. The Magistrate Judge concluded that this reliance was flawed:

[T]he administrative law judge relied on the opinions of the state agency physicians in finding that plaintiff's seizure disorder was not of listing level severity. A.R. 11-12. However, those opinions appear to have been based on only the April 2007 report of

plaintiff's visit to his treating nurse practitioner. There is no indication in the record that any qualified medical expert has ever considered this issue in light of all the medical evidence, including the reports of plaintiff's treating neurologists. Moreover, the administrative law judge herself gave only cursory attention to the issue and this Court is unable to conclude that her analysis in this regard is supported by substantial evidence.

Report and Recommendation, at 7.

The *Objection* takes the position that the Commissioner is not obligated to expressly consider the requirements of any particular listing; the Commissioner also argues that, although the first state agency physician upon whose opinion the administrative law judge relied had not reviewed all the pertinent medical evidence, the second state agency physician performed his review at a later date, when additional medical evidence had been submitted. Because that assessment considered plaintiff's medical condition "Through Date of Current Determination," *Objection*, at 1-3, the Commissioner now argues, the administrative law judge did not err in relying on that opinion. This Court is not persuaded by the Commissioner's contention.

W. Jerry McCloud, M.D., the second state agency physician, reviewed the record in October 2007 - after reports from plaintiff's treating neurologists had been added to the record. However, and as the Magistrate Judge noted, it appears that Dr. McCloud did not consider that medical evidence. See A.R. 180 ("There is no new medical since the prior decision that would alter the 6/11/07 [residual functional capacity assessment]"). Dr. McCloud also expressly noted that there was "no med. evidence in file" at the time of his review. A.R. 48.

Under these circumstances, this Court agrees that the administrative law judge's finding that plaintiff's seizure

disorder neither met nor equaled a listed impairment is not supported by substantial evidence.

Accordingly, the Commissioner's *Objection*, Doc. No. 20, is **DENIED**. The *Report and Recommendation*, Doc. No. 19, is **ADOPTED and AFFIRMED**. The decision of the Commissioner is **REVERSED** and this matter is **REMANDED** for further consideration of whether plaintiff's seizure disorder meets or equals a listed impairment.

The Clerk is **DIRECTED** to enter **FINAL JUDGMENT** pursuant to Sentence 4 of 42 U.S.C. §405(g).

/s/ Gregory L. Frost
Gregory L. Frost
United States District Judge